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MI Hotels of Las Vegas, Inc. and
Marriott International, Inc.

UNITED STATES DISTRICT COURT
CLARK COUNTY, NEVADA

ODIS MACK,

Plaintiffs,

v.

MI HOTELS OF LAS VEGAS, INC., a
Nevada Corporation; MARRIOTT
INTERNATIONAL, INC., a Delaware
Corporation; DOES I through X, inclusive;
ROE Corporations and Limited Liability
Companies I through X, inclusive

Defendants,

CASE NO.: 2:20-cv-01493-JCM-NJK

**DEFENDANTS ANSWER TO
COMPLAINT AND DEMAND FOR
JURY TRIAL**

COME NOW Defendants MI HOTELS OF LAS VEGAS, INC., and
MARRIOTT INTERNATIONAL, INC., by and through their counsel of record,
Linda K. Rurangirwa and the law offices of Collinson, Daehnke, Inlow & Greco and
in answer to Plaintiff ODIS MACK's Complaint on file herein, admit, deny, and
allege as follows:

IDENTIFICATION OF THE PARTIES

1. Answering Paragraph 1 of Plaintiff's Complaint on file herein,
Defendants are without sufficient knowledge or information to form a belief as to the

1 truth of the allegations contained in said paragraphs, and on that basis, deny each and
2 every allegation contained therein.

3 2. Answering Paragraph 2 of Plaintiff's Complaint on file herein,
4 Defendants admit the allegations contained therein.

5 3. Answering Paragraph 3 of Plaintiff's Complaint on file herein,
6 Defendants admit the allegations contained therein.

7 4. Answering Paragraph 4 of Plaintiff's Complaint on file herein,
8 Defendants are without sufficient knowledge or information to form a belief as to the
9 truth of the allegations contained in said paragraphs, and on that basis, deny each and
10 every allegation contained therein.

11 5. Answering Paragraph 5 of Plaintiff's Complaint on file herein,
12 Defendants are without sufficient knowledge or information to form a belief as to the
13 truth of the allegations contained in said paragraphs, and on that basis, deny each and
14 every allegation contained therein.

15 6. Answering Paragraph 6 of Plaintiff's Complaint on file herein,
16 Defendants are without sufficient knowledge or information to form a belief as to the
17 truth of the allegations contained in said paragraphs, and on that basis, deny each and
18 every allegation contained therein.

19 **GENERAL ALLEGATIONS**

20 7. Answering Paragraph 7 of Plaintiff's Complaint on file herein,
21 Defendants are without sufficient knowledge or information to form a belief as to the
22 truth of the allegations contained in said paragraphs, and on that basis, deny each and
23 every allegation contained therein.

24 8. Answering Paragraph 8 of Plaintiff's Complaint on file herein,
25 Defendants are without sufficient knowledge or information to form a belief as to the
26 truth of the allegations contained in said paragraphs, and on that basis, deny each and
27 every allegation contained therein.

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1 9. Answering Paragraph 9 of Plaintiff's Complaint on file herein,
2 Defendants are without sufficient knowledge or information to form a belief as to the
3 truth of the allegations contained in said paragraphs, and on that basis, deny each and
4 every allegation contained therein.

5 10. Answering Paragraph 10 of Plaintiff's Complaint on file herein,
6 Defendants are without sufficient knowledge or information to form a belief as to the
7 truth of the allegations contained in said paragraphs, and on that basis, deny each and
8 every allegation contained therein.

9 11. Answering Paragraph 11 of Plaintiff's Complaint on file herein,
10 Defendants are without sufficient knowledge or information to form a belief as to the
11 truth of the allegations contained in said paragraphs, and on that basis, deny each and
12 every allegation contained therein.

13 12. Answering Paragraph 12 of Plaintiff's Complaint on file herein,
14 Defendants are without sufficient knowledge or information to form a belief as to the
15 truth of the allegations contained in said paragraphs, and on that basis, deny each and
16 every allegation contained therein.

17 **FIRST CAUSE OF ACTION**

18 **(Negligence – Against All Defendants)**

19 13. Defendants' responses to the allegations set forth in Paragraphs 1
20 through 12 of Plaintiff's Complaint on file herein are hereby specifically incorporated
21 herein as though fully set forth.

22 14. Answering Paragraph 14 of Plaintiff's Complaint on file herein,
23 Defendants aver that the question of duty is a legal one to which no response is
24 required. To the extent a response is required, Defendants are without sufficient
25 knowledge and information to formulate a belief as to the truth of the allegations
26 contained therein and, based upon such lack of information and belief, the same are
27 hereby denied.

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1 15. Answering Paragraph 15 of Plaintiff's Complaint on file herein,
2 Defendants aver that the question of duty is a legal one to which no response is
3 required. To the extent a response is required, Defendants are without sufficient
4 knowledge and information to formulate a belief as to the truth of the allegations
5 contained therein and, based upon such lack of information and belief, the same are
6 hereby denied.

7 16. Answering Paragraph 16 of Plaintiff's Complaint of Plaintiff's
8 Complaint on file herein, Defendants deny each and every allegation contained
9 therein.

10 17. Answering Paragraph 17 of Plaintiff's Complaint on file herein,
11 Defendants deny each and every allegation contained therein.

12 18. Answering Paragraph 18 of Plaintiff's Complaint on file herein,
13 Defendants deny each and every allegation contained therein.

14 19. Answering Paragraph 19 of Plaintiff's Complaint on file herein,
15 Defendants deny each and every allegation contained therein.

16 20. Answering Paragraph 20 of Plaintiff's Complaint on file herein,
17 Defendants deny each and every allegation contained therein.

18 21. Answering Paragraph 21 of Plaintiff's Complaint on file herein,
19 Defendants are without sufficient knowledge or information to form a belief as to the
20 truth of the allegations contained in said paragraphs, and on that basis, deny each and
21 every allegation contained therein.

22 22. Answering Paragraph 22 of Plaintiff's Complaint on file herein,
23 Defendants deny each and every allegation contained therein.

24 23. Answering Paragraph 23 of Plaintiff's Complaint on file herein,
25 Defendants deny each and every allegation contained therein.

26 24. Answering Paragraph 24 of Plaintiff's Complaint on file herein,
27 Defendants deny each and every allegation contained therein.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendant places in issue the negligence, if any, of all persons who contributed to the occurrence of the incident alleged in the Complaint, and the degree that such negligence contributed to the incident and/or the injuries sustained, if any, as a result of said incident.

SECOND AFFIRMATIVE DEFENSE

That at or about the time, date and place alleged in the Complaint, Plaintiff and other persons or parties failed to exercise ordinary care, and such failure was a contributing cause of the incident and/or injuries allegedly sustained in said incident; and the trier of fact is requested to determine the existence of such negligence and the degree that such negligence contributed to the incident and/or injuries.

THIRD AFFIRMATIVE DEFENSE

The Complaint, and each cause of action therein, does not state facts sufficient to constitute a cause of action.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claim is barred in that the action was not filed and served within the time prescribed by the N.R.S. 11.190 (4) (e).

FIFTH AFFIRMATIVE DEFENSE

That the negligence, if any, of Defendants was not a substantial factor in bringing about Plaintiff's alleged injuries and, therefore, was not a contributing cause thereof, but was superseded by the negligence of others, whose negligence was an independent, intervening and proximate cause of any injury or damage suffered by the plaintiff.

SIXTH AFFIRMATIVE DEFENSE

That the act or omission, if any, of Defendants was not a substantial factor in bringing about the Plaintiff's alleged injuries and, therefore, was not a contributing cause thereof, but was superseded by the acts or omissions of others, which were

1 independent, intervening, and proximate causes of any injury or damage suffered by
2 Plaintiff.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 Any recovery by Plaintiff pursuant to the Complaint, and each purported cause
5 of action contained therein, is governed, controlled and limited by the provisions of
6 NRS 41.141.

7 **EIGHTH AFFIRMATIVE DEFENSE**

8 That Defendants had no notice, either actual or constructive, of any dangerous
9 or defective condition.

10 **NINTH AFFIRMATIVE DEFENSE**

11 That any defect that may have existed was trivial as a matter of law.

12 **TENTH AFFIRMATIVE DEFENSE**

13 Any risk or hazard that existed at the time and place of the alleged incident
14 was assumed by the complaining party.

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 There is no liability as the danger, if any, which existed at the time and place
17 mentioned in the Complaint was a danger that would have been reasonably apparent
18 to, and would have been anticipated by, a person exercising due care.

19 **TWELFTH AFFIRMATIVE DEFENSE**

20 Plaintiff has failed to mitigate the damages alleged in the Complaint and thus,
21 any recovery should be reduced accordingly.

22 **THIRTEENTH AFFIRMATIVE DEFENSE**

23 The condition of the property complained of was not a dangerous condition.

24 **FOURTEENTH AFFIRMATIVE DEFENSE**

25 That other persons and entities not parties to this lawsuit, were themselves
26 responsible for Plaintiff's damages, if any. Defendants request that their liability, if
27 any, be assessed in proportion to the liability of other co-defendants, persons, and
28 entities who are not parties to this action, and that Defendants be required to pay only

1 for their proportionate share of fault, if any.

2 **FIFTEENTH AFFIRMATIVE DEFENSE**

3 Plaintiff failed to state a claim that would entitle him to punitive damages.

4 **SIXTEENTH AFFIRMATIVE DEFENSE**

5 Plaintiff failed to allege conduct by Defendants that was grossly negligent,
6 reckless, willful, intentional malicious, oppressive or fraudulent and done in reckless
7 disregard of the safety and rights of Plaintiff such that punitive damages can be
8 awarded.

9 **SEVENTEENTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claims are barred by the doctrines of laches, waiver, estoppel, and/or
11 the Statute of Frauds.

12 **EIGHTEENTH AFFIRMATIVE DEFENSE**

13 Defendants assert that Plaintiff's injuries, if any, were caused by the acts or
14 inactions of persons beyond the control or right of control of Defendants and for
15 whom Defendants are not liable or responsible.

16 **NINETEENTH AFFIRMATIVE DEFENSE**

17 Defendants asserts that they fully performed and discharged all obligations
18 owed to Plaintiff including meeting the requisite standard of care to which Plaintiff
19 was entitled.

20 **TWENTIETH AFFIRMATIVE DEFENSE**

21 That it has been necessary for Defendants to employ the services of an attorney
22 to defend this action and a reasonable sum should be allowed to Defendants for
23 attorney's fees, together with costs of suit incurred herein.

24 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

25 Plaintiff's injuries and damages, if any, are the result of Plaintiff's own
26 negligence, if any, which may exceed the negligence, if any, of Defendants and
27 therefore bars recovery by Plaintiff. Defendants asserts that Plaintiff's own actions
28 contributed to the damages alleged in the Complaint.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's injuries and damages, if any, were the result of forces of nature over which Defendants had no control.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Defendants are entitled to contractual indemnity and comparative equitable indemnity from others.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff has failed to join necessary and indispensable parties to the action.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

If Plaintiff has sustained any injuries or damages, such were the result of intervening or superseding events, factors, occurrences or conditions, which were in no way caused by Defendants, and for which Defendants are not liable.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The instant dispute arises from a matter covered by a binding arbitration agreement between Plaintiff and Defendants, and Defendants desire that this matter be submitted to binding arbitration in accordance with the terms of the Arbitration Agreement.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Defendants alleges that the injuries and damages, if any, suffered by Plaintiff can and do occur in the absence of negligence.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Defendants cannot fully anticipate all affirmative defenses that may be applicable to this action based upon the conclusory/general terms used in the Complaint. Accordingly, Defendants expressly reserves the right to assert additional defenses as applicable.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Defendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Federal Rules of Civil Procedure as if fully set forth

1 herein. In the event further investigation or discovery reveals the applicability of any
2 such defenses, Defendants reserve the right to seek leave of court to amend this
3 Answer to specifically assert any such defense. Such defenses are herein
4 incorporated by reference for the specific purpose of not waiving any such defense.

5 **THIRTIETH AFFIRMATIVE DEFENSE**

6 Some of the foregoing affirmative defenses have been pled for purposes of
7 non-waiver. Additionally, pursuant to FRCP 11 all possible affirmative defenses may
8 have not been alleged herein insofar as sufficient facts were not available after
9 reasonable inquiry upon filing of these Defendants' Answer. Therefore, Defendants
10 reserves the right to amend their Answer to allege additional affirmative defenses if
11 subsequent investigation so warrants.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Defendants pray as follows:

- 14 1. That Plaintiff takes nothing by reason of his Complaint;
15 2. For all attorney's fees, incurred in the defense of Plaintiff's Complaint
16 against Defendants;
17 3. For costs and disbursements incurred herein; and
18 4. For such other and further relief as the Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Defendants demand a trial by jury pursuant to Rule 38 (b) of the Federal Rules of Civil Procedure.

Dated: August 24, 2020

COLLINSON, DAEHNKE, INLOW & GRECO

BY: /s/ Linda K. Rurangirwa

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CERTIFICATE OF SERVICE

Pursuant to Fed.R.Civ.P. 5(b), I hereby certify that on the 24th day of August, 2020, the foregoing **DEFENDANTS ANSWER TO COMPLAINT AND DEMAND FOR JURY TRIAL** was served as follows upon the following through the CM/ECF System of the United States District Court of the District of Nevada upon the following:

Donald J. Campbell
Samuel R. Mirkovich
Garrett B. Logan
CAMPBELL & WILLIAMS
700 South Seventh Street
Las Vegas, NV 89101
Attorney for Plaintiff
Odis Mack

By /s/ Richean Martin

An employee of COLLINSON, DAEHNKE,
INLOW & GRECO